IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6354 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANTIBHAI P PATEL

Versus

G E B

Appearance:

MR TR MISHRA for Petitioner

NOTICE SERVED for Respondent No. 1

MR MD PANDYA for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 18/02/2000

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or writ of certiorari or any other appropriate writ, order or direction to quash and

set aside the action of the selection committee in not finding the petitioner suitable for the grant of benefit of next higher grade of Rs.275 - Rs.635 under General Standing Order No.247.

2. The petitioner was appointed as Helper in the Gujarat Electricity Board on June 1, 1974. The general standing order No.247 dated October 22, 1973 made by the Gujarat Electricity Board, Baroda provides that an employee who has completed 9 years service in the same cadre / post in a particular pay scale [pre-revised or revised] and who has not got promotion for no fault on his own on 1/8/1972 for want of clear vacancy or for want of channel of promotion or who may complete 9 years service in the same cadre / post in a particular pay scale after 1/8/1972, shall be entitled to the promotion to next higher pay scale from 1/8/1972 or from the date following the date on which he completes 9 years service in the same cadre / post as the case may be and his pay shall be fixed in that grade in accordance with S.R. 102[b] irrespective of the fact that whether suitable vacancies in the next higher post are available or not. The case of the petitioner was that he having completed 9 years service in the same post, was entitled to next higher pay scale and therefore, he submitted his option form for grant of higher grade as contemplated by general standing order No. 247. The selection committee considered the case of the petitioner, but did not find him suitable for the grant of benefit of next higher grade of Rs.275 - Rs.635 and therefore, he was not granted the said benefit. The decision of the selection committee was conveyed to the petitioner by the Superintending Engineer [O & M], Sabarmati which is produced by the petitioner at Annexure `B' to the petition. The petitioner has averred that though punishment of withholding of yearly increment was imposed on him in a departmental inquiry, his case is covered by the provisions of the general standing order No.247 and he is entitled to get next higher pay scale. Under the circumstances, the petitioner has filed this petition and claimed relief to which reference is made earlier.

3. Mr.P.C.Asudani, Assistant Secretary, Gujarat Electricity Board, Sabarmati Circle, Ahmedabad has filed reply affidavit controverting the averments made in the petition. In the reply, it is emphasised that an employee is entitled to benefit of next higher pay scale under general standing order No.247 only if he is otherwise found to be fit for promotion on the basis of overall performance and as the petitioner was not found fit for promotion on the basis of overall performance,

the petition should be dismissed. It is also claimed in the reply that over and above the punishment which was imposed on the petitioner for misconduct, his confidential reports as mentioned in para 12 of the reply affidavit, were also considered by the selection committee and as the selection committee did not find the petitioner otherwise fit for promotion on the basis of overall performance, the petitioner is not entitled to the reliefs claimed in the petitioner.

4. I have heard the learned counsel for the parties as well as considered the provisions of general standing order No.247 and documents produced by the parties on the record of the petition.

5. Though it is true that general standing order No.247 dated October 22, 1973 provides for benefit of next higher pay scale to an employee who has completed 9 years service in the same post, it is subject to fulfillment of certain conditions, one of which is that such employee should otherwise be found fit for promotion on the basis of overall performance. It is an admitted position that, for three lapses on his part, a departmental inquiry was conducted against the petitioner and at the conclusion of the said inquiry, punishment of stoppage of annual increment with cumulative effect was imposed on the petitioner by order dated December 18, 1984. This order has become final inasmuch as it was never challenged by the petitioner by way of filing an appeal before the competent authority. The learned counsel for the petitioner submitted that this order of imposition of penalty is illegal inasmuch as opportunity of being heard was never given to the petitioner. However, I am of the opinion that this question cannot be gone into in the present petition which is filed for obtaining benefits in terms of provisions of general standing order No.247. The petitioner has not prayed in this petition that the order of imposition of punishment being illegal, should be set aside. No grievance was made by the petitioner before statutory appellate authority that the punishment of stoppage of annual increment with cumulative effect was imposed on him without affording an opportunity of being heard to him. Under the circumstances, it will have to be held that punishment of stoppage of annual increment with cumulative effect was imposed on the petitioner and the respondents were justified in taking into consideration the same while determining the question whether the petitioner was fit for promotion on the basis of overall performance. In the reply affidavit, the confidential reports of the petitioner from 1976 to 1986 are

re-produced. In 1976, the petitioner was found habitual in leaving the head quarters without prior permission and it was also found that his relations with fellow workers were not good. According to the confidential report of 1976, the petitioner was disobeying the orders and creating problems. Again in 1978, it was noted that his nature was not found to be cooperative and he was not obeying instructions nor keeping notes of the work carried out by him and was found most irregular in attendance. The confidential report of 1979 shows that he was not found attending work as per the instructions of superiors and was found avoiding responsibility. Further though he was working at village Bardoli - Baria, he was not replying letters and was not maintaining diary as instructed. In 1980, it was found that the petitioner was suffering from superiority complex and was warned twice for better workmanship and to become disciplined. It was also found that he used to speak more than necessary. Some of the confidential reports from 1981 to 1986 were below average, whereas some were average. The selection committee had considered confidential reports as well as minor punishment imposed on the petitioner for his misconduct. Therefore, it is difficult to conclude that decision making process is vitiated in any manner. The petitioner having not been found fit for promotion on the basis of overall performance, he is not entitled to claim reliefs claimed in the present petition. The petition therefore is liable to be dismissed.

6. For the foregoing reasons, the petition fails and is hereby dismissed. Rule is discharged with no orders as to costs.

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